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10 *Attorneys for Defendants,*

11 *Wells Fargo Bank, NA and Mortgage Electronic Registration Systems, Inc.*

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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

DENNIS E. SCARBERRY,

Plaintiff,

vs.

FIDELITY MORTGAGE OF NEW YORK, a  
Division of Delta Funding Corp.; OCWEN  
LOAN SERVICING COMPANY, LLC;  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS (herein MERS);  
WESTERN PROGRESSIVE, LLC; HSBC  
BANK USA, N.A.; CAL-WESTERN  
RECONVEYANCE CORP.; WELLS FARGO  
BANK, NA; RENAISSANCE MORTGAGE  
ACCEPTANCE CORPORATION; LSI TITLE  
AGENCY INC, and DOES 1-50, inclusive.

Defendants.

Case No.: 2:12-cv-00128-KJD-CWH

**NOTICE OF NON-OPPOSITION TO DEFENDANTS, WELLS FARGO BANK, N.A.  
AND MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC'S, MOTION TO  
DISMISS PLAINTIFF'S COMPLAINT AND MOTION TO EXPUNGE LIS PENDENS**

Defendants, WELLS FARGO BANK, N.A.(hereinafter "Wells Fargo") and Mortgage  
Electronic Registration Systems, Inc. (hereinafter "MERS"), by and through their counsel of  
record ROBIN PREMA WRIGHT, ESQ. and DONNA M. OSBORN, ESQ. of the law firm of

1 WRIGHT, FINLAY & ZAK, LLP, hereby provide notice to the Court and all interested parties  
2 that Plaintiff, DENNIS E. SCARBERRY, failed to file a response in opposition to Defendants,  
3 WELLS FARGO BANK and MERS's, Motion to Dismiss Plaintiff's Complaint for Failure to  
4 State a Claim Upon Which Relief can be Granted ("Motion") [Dkt. 8] and Motion to Expunge  
5 Lis Pendens [Dkt. 9].

6 WELLS FARGO BANK and MERS filed their Motion to Dismiss on January 26, 2012,  
7 to which a response was due for filing and service no later than February 12, 2012. To date,  
8 Plaintiff has failed to file a response or request an extension of time to file a response to the  
9 Motion.

10 WELLS FARGO BANK and MERS, filed their Motion Expunge Lis Pendens on January  
11 26, 2012. To date, Plaintiff has failed to file a response or request an extension of time to file a  
12 response to the Motion.

13 In light of no response to the Motions being filed, and in the interest of judiciary  
14 economy, WELLS FARGO BANK and MERS, requests that this Honorable Court dismiss  
15 Plaintiff's Complaint pursuant to LR 7-2(d) and grant Defendants' Motion to Expunge Lis  
16 Pendens. Indeed, a party's failure to timely file an opposition constitutes consent to the granting  
17 of a motion. *See* LR 7-2-(d).

18 In accordance with LR 7-2(d), Plaintiff's failure to oppose WELLS FARGO BANK and  
19 MERS's Motion to Dismiss and Motion to Expunge Lis Pendens constitutes consent to the  
20 granting of the Motions.

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Therefore, WELLS FARGO BANK and MERS, requests that the Court immediately enter an order granting WELLS FARGO BANK and MERS's Motion to Dismiss for Failure to State a Claim Upon Which Relief can be Granted with prejudice and enter an order granting Defendants' Motion to Expunge Lis Pendens.

Dated: 14<sup>th</sup> day of Feb, 2012.

WRIGHT, FINLAY & ZAK, LLP

/s/ Donna M Osborn, Esq.

Donna M. Osborn, Esq.

Nevada Bar No. 6527

5532 South Fort Apache Road, Suite 110

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*Attorney for Defendants, Wells Fargo Bank, NA and  
Mortgage Electronic Registration Systems, Inc.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of WRIGHT, FINLAY & ZAK, LLP; that I electronically served the foregoing **NOTICE OF NON-OPPOSITION TO DEFENDANTS, WELLS FARGO BANK, N.A. AND MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC'S, MOTION TO DISMISS PLAINTIFF'S COMPLAINT AND MOTION TO EXPUNGE LIS PENDENS** to all parties and counsel as identified on the Court-generated Notice of Electronic Filing and by depositing a true and correct copy of the same in the United States Mail, at Las Vegas, Nevada, addressed as follows.

Dennis E. Scarberry  
3005 Milton Pace  
North Las Vegas, NV 89032  
*Plaintiff in Proper Person*

/s/ Erica Baker

An Employee of WRIGHT, FINLAY & ZAK, LLP